

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
Connect America Fund)	
)	WC Docket No. 10-90
A National Broadband Plan for Our Future)	
)	GN Docket No. 09-51
Establishing Just and Reasonable Rates for Local Exchange Carriers)	
)	WC Docket No. 07-135
High-Cost Universal Service Support)	
)	WC Docket No. 05-337
Developing an Unified Inter-carrier Compensation Regime)	
)	CC Docket No. 01-92
Federal-State Joint Board on Universal Service)	
)	CC Docket No. 96-45
Lifeline and Link-Up)	
)	WC Docket No. 03-109
Universal Service Reform – Mobility Fund)	
)	WT Docket No. 10-208

**OPPOSITION OF REDWOOD COUNTY TELEPHONE COMPANY
TO CENTURYLINK’S PETITION FOR WAIVER**

Redwood County Telephone Company (“Redwood”), by its attorneys, hereby opposes the June 26, 2012, Petition for Waiver of CenturyLink in the above-referenced proceedings (“Petition”) according to the schedule established by the Wireline Competition Bureau (“Bureau”).¹ CenturyLink seeks a waiver of section 54.312(b) of the Commission’s Rules, which provides that recipients of Connect America Fund Phase I (“CAF Phase I”) incremental support must deploy broadband to locations identified as unserved by fixed

¹ CenturyLink Petition for Waiver, WC Docket No. 10-90 et al. (filed June 26, 2012) (“Petition”). On June 27, 2012, the Bureau issued a Public Notice seeking comment on the Petition and setting July 12, 2012, as the initial comment date. *See* Public Notice, WC Docket Nos. 10-90 and 05-337, DA 12-1007 (WCB rel. June 27, 2012).

broadband on the then-current version of the National Broadband Map (“NBM”).² 47 C.F.R. § 54.312(b). CenturyLink requests a waiver of this rule so that, using CAF Phase I funds, it may deploy to numerous locations shown on the NBM as served by fixed wireless providers. CenturyLink contends that the fixed wireless providers at issue, which include Redwood, do not serve fully those locations.

As demonstrated herein, the Commission has already rejected the arguments raised by CenturyLink in the *Second Order on Reconsideration* in the above-referenced proceedings.³ Accordingly, CenturyLink in effect seeks further reconsideration of the Commission’s orders in these proceedings, not a waiver of the Rules. Further, even if the Commission were to entertain the Petition, rather than dismiss it summarily, it must examine the contentions CenturyLink makes regarding service providers and services in each of the dozens of locations identified in the waiver. In the case of Redwood, the petition does not adequately identify the geographic area in which it seeks a waiver. Moreover, the criteria that CenturyLink espouses to support its request are arbitrary and, even if they could justify a waiver, simply are not satisfied.

Accordingly, the Commission should deny the Petition, as a general matter. At a minimum, the waiver request should be denied as to the geographic location served by Redwood.⁴

² see also *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“USF/ICC Transformation Order and FNPRM”); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011).

³ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Second Order on Reconsideration, FCC 12-47 (rel. April 25, 2012) (*Second Order on Reconsideration*).

⁴ Redwood takes no position on whether the criteria CenturyLink espouses apply to other locations identified in the Petition

I. THE PETITION IS A THINLY VEILED REQUEST FOR FURTHER RECONSIDERATION RAISING ARGUMENTS THE COMMISSION HAS ALREADY DECISIVELY REJECTED

CenturyLink seeks a waiver of 47 C.F.R. § 54.312(b) in order to obtain permission to spend CAF Phase I funds on communities that are served only by a wireless Internet service provider (“WISP”), when at least one of the following two conditions advocated by CenturyLink applies:

- the community lies within a state that has not independently verified WISP coverage areas shown in the NBM, and objective indicia (as defined and applied by CenturyLink) demonstrate that the WISP could not plausibly serve the areas that the NBM shows it to cover; or
- the WISP, like satellite broadband providers, imposes unusually high (as defined by CenturyLink) retail prices (\$720 or more for the first year of service) or unusually stringent (as defined by CenturyLink) data caps (25 GB per month or below).⁵

As detailed below, the Petition merely reargues, in the specific context where the existing broadband providers are WISPs, points already made by CenturyLink and others before the Commission earlier this year and rejected in the April 25, 2012, *Second Order on Reconsideration*.

On reconsideration of the *USF/ICC Transformation Order*, the Commission addressed arguments made by Independent Telephone & Telecommunications Alliance and others, including CenturyLink, seeking amendment of the rules requiring carriers receiving CAF Phase I incremental to deploy broadband to locations shown on the NBM as unserved by fixed broadband. These parties made several arguments that carriers eligible for CAF Phase I support

⁵ Petition, Executive Summary at 2.

should be able, on a case-by-case basis, to demonstrate that locations shown by the NBM as served are in fact unserved:

- “ITTA claim[ed] that there are locations which the National Broadband Map indicates are served by a carrier other than the incumbent LEC, but which the incumbent LEC reasonably believes are not, in fact, served by that other provider. ITTA propose[d] that carriers receive credit for deploying to such areas, if they provide evidence that there are unserved locations in the area. . . . To rebut the CAF Phase I recipient’s certification [that all or part of a location is unserved], ITTA propose[d] that those other providers would be required to certify that they can provide service throughout the relevant area and would be required to provide one or more consumer declarations from customers who either currently or in the past have subscribed to the provider’s service within the relevant area. If no provider rebutted the CAF Phase I recipient’s certification, the CAF Phase I recipient would be permitted to deploy to unserved locations in the census block at issue.”⁶
- “ITTA, joined by several carriers [including CenturyLink], also ask[] that we permit carriers receiving CAF Phase I incremental support to deploy broadband to locations that are served by another broadband provider but where the service offered by that other provider does not meet defined service characteristics. They propose[d] that the other provider offer service of at least 768 kbps sustained download speed, with a usage limit no lower than 53 gigabytes per month, all at a price no higher than the month-to-month price of the highest price for a similar product from a wireline provider in the state.”⁷

The Commission declined to amend the rules in the manners described above as ITTA, CenturyLink, and others had advocated. In the *Second Order on Reconsideration*, the Commission rejected each of these proposals. As to the first argument above, the Commission noted that CAF Phase I recipient would possess extremely limited knowledge about which locations in a census block are actually unserved by any other carrier (e.g., customer certifications would be of limited use “because a provider may have no customers in a particular

⁶ *Second Order on Reconsideration*, ¶ 12 (footnote omitted)..

⁷ *Id.* ¶ 14 (citing *See* Letter from Melissa Newman, CenturyLink, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, et al. (filed Mar. 30, 2012)) (footnotes omitted).

census block, even though it offers service there”) and that the process of rebuttal by existing providers “might be quite time consuming given [their] limited resources.”⁸

As to the second argument that ITTA and CenturyLink made, that a CAF Phase I recipient be able to demonstrate that locations the NBM shows are served by others do “not meet defined service characteristics,” the Commission explained its rejection as follows:

We acknowledge that some consumers may live in areas ineligible for CAF Phase I support even though the broadband available to them does not currently meet our goals. The Commission chose in CAF Phase I, however, to focus limited resources on deployments to extend broadband to some of the millions of unserved Americans who lack access to broadband entirely, *rather than to drive faster speeds to those who already have service*. We are not persuaded that the decision about the more pressing need was unreasonable. Moreover, *we are not persuaded that permitting CAF Phase I recipients to overbuild other broadband providers represents the most efficient use of limited CAF Phase I support*. In addition, we conclude that *we do not have an adequate record at this time to make a determination about how high a competitor’s price must be—either alone or in combination with usage limits—before we would support overbuilding that competitor, a critical component of petitioners’ request*.⁹

In the Petition, CenturyLink seeks to resurrect these same arguments, albeit in the more limited context of WISPs. The Petition proffers “defined service characteristics” just as CenturyLink and ITTA did in the rulemaking based on price, data caps, and downlink speeds, even if they are slightly different in the Petition than the ones rejected in the *Second Order on Reconsideration*. See Petition at 7-8. Thus, CenturyLink seeks to accomplish through waiver precisely what the Commission rejected in the *Second Order on Reconsideration*, namely, giving CAF Phase I recipients the ability to seek a lifting, on a case-by-case basis, of the ban against applying Phase I funding to communities designated as served on the NBM.¹⁰

⁸ *Second Order on Reconsideration*, ¶ 13.

⁹ *Id.*, ¶ 15 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17712, ¶ 127) (emphases added)(footnote omitted).

¹⁰ CenturyLink’s attempt to impose the pricing and data cap criteria according to which its, and presumably any other, CAF Phase I waiver requests should be evaluated further

CenturyLink fails to explain in the Petition why the considerations that led the Commission to reject rule changes conferring that opportunity on Phase I recipients should apply in the more limited case of WISPs, even where the criteria are different.¹¹ Notably, in the *Second Order on Reconsideration*, the Commission did not reject the arguments of ITTA, CenturyLink, and others on the basis of the criteria selected, but because the Commission had made a public interest finding that CAF Phase I funds should be focused on the extension of “broadband to some of the millions of unserved Americans who lack access to broadband entirely, rather than to drive faster speeds to those who already have service.”¹² Thus, for the same reasons that the Commission rejected the arguments made by CenturyLink and ITTA less than three months ago in the above-referenced rulemakings, the Commission should deny the Petition.

II. IN THE CASE OF REDWOOD, THE CRITERIA FOR WAIVER POSITED BY CENTURYLINK ARE NOT SATISFIED

Even were the Commission to consider the arguments raised in the Petition, it would have to examine each location where CenturyLink believes that broadband service is actually unavailable or, while available, subject to such constraints or limitations such that a waiver is warranted.¹³ In the case of Redwood, CenturyLink argues that a waiver should be granted in an

underscores the procedural impropriety of the Petition. Criteria such as these should be addressed – assuming they should be addressed at all, given the Commission’s rejection of similar arguments just three months ago in the *second Order on Reconsideration* – through the appropriate process. More specifically, rather than through *ad hoc* waiver petitions, such criteria should be considered in a generic rulemaking.

¹¹ Indeed, at its core, the Petition is an untimely request for reconsideration of the Commission’s decision to consider WISPs as service providers for purposes of ascertaining on the NBM whether an area is served or unserved. For this reason, too, the Petition should be dismissed as procedurally improper.

¹² *Second Order on Reconsideration*, ¶ 15.

¹³ The Minnesota Department of Commerce (“MDOC”) filed comments in support of the Petition but offered no discussion of the five individual companies and service areas defined in the Petition. *See* Comments of the Minnesota Department of Commerce, WC Docket No. 10-90 et al. (filed July 11, 2012). Rather, MDOC improperly treats them all indiscriminately and provides no evidence in an effort to address any deficiencies in the

unspecified location allegedly served by “113 CenturyLink Living Units” to allow CenturyLink to build out using Phase I funds apparently on the basis that WISP service is somehow inferior to fixed wireline service – either because of line-of-sight concerns or congestion on Redwood’s network – and because Redwood’s prices, according to CenturyLink, are too high.¹⁴ Petition at 7-14 and Exhibit B.

As explained below, the Petition does not adequately identify the service area in question, limiting Redwood’s ability to respond. Moreover, CenturyLink’s criteria are arbitrarily chosen. Further, under Redwood’s current pricing, in the worst case scenario, Redwood’s pricing is right at the arbitrary threshold level selected by CenturyLink. But in practice, customers are eligible for and typically sign-up for a pricing plan that would lower their annual costs substantially from this worst case look.

Redwood is certificated by the Minnesota Public Utilities Commission as an incumbent local exchange carrier. Redwood provides (along with its subsidiary Clements Telephone Company) telephone service and High Speed Internet via DSL to eleven exchanges in southwestern Minnesota. Redwood also provides Wireless High Speed Internet access service to

Petition, as described herein. *Id.* 3-4. While MDOC cites to a survey suggesting that 1/5 of Minnesota residents choosing not to subscribe to broadband mention price as a factor in their decision, that survey result does not ameliorate the arbitrariness of CenturyLink’s chosen threshold nor offer any guidance what price is high enough to warrant waiver consideration. Indeed, it is noteworthy that, of the first-year prices reported by CenturyLink for the five Minnesota companies cited in the Petition, Redwood is the lowest and falls well below the three highest, which, according to CenturyLink, are \$1149.26, \$1,147.40, and \$955.40. *See* Petition, Exhibit B. Redwood takes no position on whether a waiver should be granted in these companies’ territories if the Commission does not, as Redwood submits it should, summarily reject the Petition in its entirety. *See* Section I, *supra*. Instead, Redwood brings attention to this disparity merely to highlight that the waiver request, were it to be considered, must be considered with regard to each area individually and not as a whole within the State of Minnesota, let the whole of the locations identified in the Petition..

¹⁴ CenturyLink does not claim that Redwood’s customers are subject to a data cap, which they are not. Declaration of Mark Birkholz, Director of Southwest Markets, Redwood County Telephone Company, ¶ 7 (“Birkholz Declaration”)(attached hereto).

around 600 customers at the following locations; Sleepy Eye, Renville, Lamberton, West of Redwood Falls, Morgan, Olivia, Lucan, Gibbon, Hanley Falls, Cottonwood, and Fairfax, Minnesota.¹⁵ Redwood competes with CenturyLink among other providers, including MVTW Wireless which provides broadband service throughout much of Redwood’s operating territory and, indeed, received broadband stimulus money to do so.¹⁶ Redwood provides a 1 MB download speed at a monthly rate of \$49.95. Customers that commit to a two-year plan have their installation fee and site survey charge (\$99 and 25, respectively) waived.¹⁷ There are no data caps imposed on Redwood WISP customers.¹⁸

As indicated above, CenturyLink seeks a waiver in an unspecified location served by Redwood in which 113 CenturyLink Living Units are affected by the operation of Commission Rule Section 54.312(b). 47 C.F.R. § 54.312(b). Beyond this “description,” CenturyLink does not identify the geographic area in which it seeks a waiver. Redwood’s operating territory in which it provides WISP service and in which it understands CenturyLink operates includes more than 113 addresses. *See Birkholz Declaration*, ¶ 8. As Mr. Birkholz explains, because CenturyLink has not more precisely defined the limited territory in which Redwood’s WISP operates where CenturyLink seeks authority to spend CAF Phase I funds, it is impossible for Redwood to respond to CenturyLink’s apparent allegations that, for these 113 living units, Redwood’s service is affected by line-of-sight issues or subject to congestion, although as noted

¹⁵ *Id.*, ¶ 3.

¹⁶ *Id.*, ¶ 4.

¹⁷ *Id.*, ¶¶ 5. 2 MB downlink speed WISP service is also available from Redwood at a higher charge. *Id.*, ¶ 6.

¹⁸ *Id.*, ¶ 7.

below, Redwood’s service is not characterized by such problems.¹⁹ Mr. Birkholz notes that much of Redwood’s WISP service territory consists of plains and rolling hills in which line-of-sight issues are not likely to be prevalent.. *Id.* ¶ 9. In addition, he reports that Redwood has not received complaints regarding congestion or capacity issues from its Wireless Internet broadband access customers, preventing customers from receiving their advertised downlink speeds. *Id.* ¶ 10.

Not only does the Petition fail to adequately identify the geographic area in question that is allegedly unserved, but CenturyLink’s quantitative criteria – including its pricing criterion with which it seeks to corral Redwood – were arbitrarily selected. CenturyLink targets service territories in its waiver where WISP service for the first twelve months is \$720.00 or above, including installation fees. Petition at 11. As explained in the Declaration of Peter Copeland, attached to the Petition (“Copeland Declaration”), the \$720 threshold figure simply reflects *CenturyLink’s* conclusion what would be a reasonable annual layout for broadband. *Copeland Declaration* ¶ 9. CenturyLink offers that the threshold price is “significantly higher” than the CenturyLink rate of \$540. *Copeland Declaration* ¶ 9. Why the CenturyLink rate should be the proper comparison rate is not explained. No evidence is offered why the \$720 rate should be the threshold if the CenturyLink rate is the comparison point. While CenturyLink claims \$720 is “similar to that charged by satellite broadband suppliers,” it offers no data in support of that assertion. *See id.* ¶ 9. Indeed, in the *USF/ICC Transformation Order and FNPRM*, the Commission did not determine a typical price for satellite broadband service.²⁰ Further, in the

¹⁹ Consequently, the poor description of the geographic location in question also makes it impossible to ascertain whether MVTW Wireless or another provider also offers service in the location where CenturyLink seeks a waiver.

²⁰ In the *USF/ICC Transformation Order and FNPRM* (¶ 273, n. 451), the Commission notes that the State Members of the Universal Service Joint Board asserted that satellite-based broadband service is available for around \$80 per month, 33% per cent higher than

FNPRM, the Commission makes a number of inquiries into satellite service underscoring the impropriety of relying on the petition's characterization of WISP service as being comparable to satellite service in relevant respects.²¹ Therefore, because the Petition's \$720 threshold was arbitrarily selected and inadequately supported, CenturyLink's criteria should be rejected and the Petition dismissed as to Redwood (and to any other companies that are included because of failing that CenturyLink criterion).

In any event, when Redwood's rate structure is properly viewed, it is clear that the Petition overstates Redwood's actual rate materially. When new customers sign up with Redwood for a twenty-four month agreement, the installation charge (and site survey charge) is waived. *Birkholz Declaration* ¶ 5. Customers commonly choose this option, such that the total rate for the first year typically is \$599.40, or 17% below the threshold rate arbitrarily selected by CenturyLink in the Petition. *Id.* Consequently, even using the criteria suggested by CenturyLink, and setting aside their arbitrary nature, the territory served by Redwood's WISP service as a whole does not meet the Petition's criteria for waiver.

Finally, even if the installation and site survey charges are included, Redwood is a mere fraction of a percent above the threshold. CenturyLink properly calculates in this worst case scenario – which is not the norm – that Redwood exceeds the CenturyLink pricing criterion by all of \$3.40 annually, *or less the ½ of one percent*. Petition, Exhibit B. That represents *less than 30 cents a month*. It is highly dubious that a waiver should be granted as a result of such a small increment in price. Consequently, absent some clear evidence that Redwood's service also

CenturyLink contends, putting into question the Petition's claim that its threshold is similar to that charged by satellite-based suppliers.

²¹ See, e.g., *id.* ¶¶ 1224, 1242, 1260, 1266-69.

experiences capacity constraints, particular line-of-sight issues, or a data cap, a waiver would not be warranted even assuming use of the arbitrary CenturyLink criteria were justified.

But none of these other criteria are triggered. Mr. Birkholz explains that, to date, customers of Redwood's WISP service have not been the victims of capacity constraints. Customers receive the 1 MB downlink speeds as advertised. *Birkholz Declaration* ¶ 10. Nor have there been complaints to the contrary. *Id.* Further, while all WISP service requires line-of-sight, in the topography of the territory that Redwood serves, this is rarely an issue. Mr. Birkholz notes that, in Redwood's experience, less than 2% of potential subscribers are subject to line-of-sight problems as a result of the site surveys undertaken before service can be initiated. *Id.* ¶ 9. Finally, as already explained, Redwood's WISP service is not subject to a data cap. *Id.*

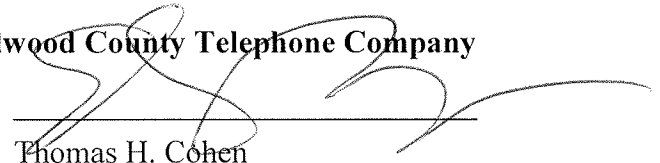
CONCLUSION

For the foregoing reasons, the Petition should be denied as a general matter. In the event that the Commission addresses the requested waiver in the Redwood territory served by the “113 CenturyLink living units affected,” the Petition should be denied at that location because the geographic territory is not defined, the CenturyLink pricing criterion is arbitrary, and Redwood does not meet any of CenturyLink’s self-selected criteria in any event.

Respectfully Submitted,

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July 12, 2012

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